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No. 93-2065

In The

Supreme Court of the United States

October Term, 1994

STATE OF MAINE,

Petitioner,

v.

DAREN L. GRAVES,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Judicial Court, State Of Maine

RESPONDENT'S BRIEF IN OPPOSITION

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RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, DAREN L. GRAVES, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by the Petitioner, STATE OF MAINE.

OPINIONS BELOW

The Superior Court, State of Maine, entered a conviction on a jury verdict. The Maine Supreme Judicial Court reversed the conviction and remanded.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The State of Maine petitioned for a Writ of Certiorari invoking the jurisdiction of the Supreme Court of the United States under 28 U.S.C. §1257(a).

STATEMENT OF THE CASE

The State of Maine has misstated or omitted facts bearing on the question of the issues that would properly be before the Court were certiorari granted. Pursuant to Supreme Court Rule 15.1 Respondent identifies below Petitioner's material errors and omissions.

The State of Maine in its Petition for Certiorari incorrectly claims that Respondent had the opportunity to ask the complaining witness[1] whether she sold or had been involved in the sale of a T-shirt[2], and further incorrectly claims that Respondent failed to avail himself of the opportunity to cross-examine about it. Because of these claimed failures, the State argues that the Maine Supreme Judicial Court erred by concluding that the Defendant's

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[1] The State, throughout its brief, referred to the complaining witness by her first name alone. The Maine Supreme Judicial Court, in its decision, referred to Ms. Shani Orne as the complaining witness. Respondent adopts the usage employed by the Maine Supreme Judicial Court, which is clearly preferable in style and manner. This is especially true where first name references are used with respect only to women witnesses.

[2] Further reference to the marketing, distribution, and sale of the T-shirts shall be referred to hereinafter as "the enterprise."

Sixth Amendment right to confrontation of witnesses was infringed by the trial Court's refusal to allow bias evidence.

The central issue for which the State seeks review here is conditioned entirely upon the underlying factual validity of the State's claim that the Respondent, at trial, did not cross-examine the complaining witness in greater detail with respect to her participation in a commercial enterprise exploiting the notoriety and allegations of the case. The genesis and circumstances of the in limine orders preventing Respondent from fully cross-examining the witness who claimed Respondent raped her, and the Court's subsequent modification and extension of that ruling during the course of the trial is of critical import.

The State of Maine, knowing of the complaining witness's T-shirt enterprise, brought an in limine motion to exclude any evidence of her participation in it, and to prohibit introduction of or mention of the T-shirt in evidence. *(P.T. at 8.)*[3] The State represented during the course of later chamber's discussions, to the trial judge that the complaining witness did not participate in the T-shirt enterprise, and further represented that there was no evidence linking her to it. *(T., Vol 1 at 30.)* The Respondent represented that a witness would testify that the complaining witness was personally involved in promoting and selling the T-shirts. *(P.T. at 9).* The Court ruled that it would allow evidence relating to the T-shirt only if there was evidence tying financial interest in the shirt to

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[3] References to pages in the two volume trial transcript (M.R.Crim.P. 39(b)) shall be in parenthesis as follows: (T.,Vol ___ at ___.) References to the in limine motion shall be in parenthesis as follows (P.T. Page ___.)

the complaining witness. At that point, counsel for the Defendant indicated the following:

MR. DARDIS: I will ask her on cross-examination whether or not she was involved in the sale of or the distribution of *the* T-shirt. [Emphasis added].

The Court responded:

THE COURT: Of *a* T-shirt, of *a* T-shirt. [Emphasis added].

The colloquy continued:

MR. DARDIS: I take it at that point the Court is indicating they don't want me to offer the T-shirt or show it at that point?

THE COURT: Obviously not. If she denies it, you have to have some other separate, independent knowledge, but she –

MR. DARDIS: She was involved in the sale.

THE COURT: If somebody testifies she was involved in the sale of it, it can come in too if she was involved in the sale.

MR. DARDIS: The witness will be testifying that she was directly involved. . . .

(P.T. at 9.)

Notwithstanding the Court's in limine ruling, *supra*, the State, on the following day of trial, again sought to exclude any evidence of the enterprise, and sought to prohibit cross-examination of the complaining witness about her bias and animus toward Respondent. The State claimed that to allow the question previously approved by the Court regarding the T-shirt would be prejudicial,

and that the mere asking of the question, "without an offer of proof of being able to link it to Shani is [to get] the benefit of the question and opening that inference before the jury and the State contends he will never be able to make that link of any financial gain to Shani, to the victim." *(T., Vol 1 at 30.)* The Respondent at that point offered a detailed offer of proof as to the involvement of the complaining witness with the T-shirt. Defense counsel stated:

> MR. DARDIS: Your Honor, the defense proposes to offer the evidence of a witness who is going to testify that he bought a T-shirt from Shani Orne at Shani Orne's house.
>
> That witness will also testify that Shani Orne discussed with him the fact that she shouldn't be selling the T-shirt because she was instructed not to.[4]
>
> Perhaps the appropriate method of handling this for the Court is to take voir dire of the testimony and then make a decision.
>
> *(T., Vol.1 at 30.)*

The Court responded to the prosecution's renewed motion and Defendant's renewed offer of proof as follows:

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[4] Based on a statement from the prosecutor, the expected testimony of the complaining witness was that the prosecuting attorney had instructed her and her family to cease selling the T-shirts. Defense counsel fully expected to call the prosecuting attorney to testify, if the complaining witness denied that she had been instructed not to continue selling the T-shirts.

THE COURT: It seems to me as I understood what was going to be asked was ***a question*** which would appear in innocuous: Did you ever sell a T-shirt to so-and-so; yes or no?. [Emphasis added.]

T., Vol. 1 at 30.

During cross-examination of the complaining witness, defense counsel asked her,

MR. DARDIS: Have you sold, or have you been involved in the sale of any T-shirts that depict or show this incident?

ANSWER: No.

(T., Vol. 1 at 140-141.)

Unfortunately, the transcript does not show an objection made by the State as to the question and the Court's ruling thereon, nor the reprimand of defense counsel administered by the Court. However, from remarks made by the Court later in the trial, the objection and ruling are plainly evident. The following exchange occurred in chambers, detailing the objection and the Court's ruling:

MS. AMES: One other point while we're back here to the T-shirt again. My understanding of the way you wanted the T-shirt even brought up was whether she had sold a T-shirt.

THE COURT: Yep. The question was asked, "was there a T-shirt depicting this event?"

THE COURT: ***I sustained an objection.*** It had been asked. I thought it [i.e., the question] went beyond. [Emphasis added.]

MS. AMES: That just puts me between a rock and a hard place of objecting to something and highlighting it more".

THE COURT: "Yes."

(T., Vol. 1 at 151)

The prosecuting attorney, during the chambers discussion, asked for an order prohibiting defense counsel from any further inquiry into the T-shirt matter. The Court at that point made it clear how tightly it had controlled and would control cross-examination of the complaining witness:

THE COURT: Well, I guess what I am saying I want no further references – in my view your question went beyond what we agreed to. I talked about generic, I didn't tie it to the case. When I say something, I don't want something going beyond that to happen."

(T., Vol 1 at 153.)

This evidentiary ruling was identical in terms to the ruling made at sidebar following objection to the pre-approved question authorized by the Court.[5]

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[5] As was explained to the Justices of the Maine Supreme Judicial Court at oral argument, no further questioning of the complaining witness was undertaken with respect to the T-shirt because the trial justice had severely reprimanded defense counsel for not asking an innocuous question as opposed to a context specific question. There was appreciation of the point by the Justices of the Court as there was considerable laughter and joking by the justices about the reprimand by the trial court.

Following the side bar conference and reprimand, defense counsel attempted no further questioning, upon the instruction of the Court, about the complaining witness's involvement in the enterprise. Defense counsel went on to other matters[6] expecting that upon presentation of the evidence of Jerry Martin, the defense would recall the complaining witness and cross-examine her fully as to her participation in the production, distribution, and sale of the T-shirts. Also, at that time, the defense would have fully explored the issue of bias, as well as the animus expressed on the face of the T-shirt.[7] Had cross-examination of the complaining witness been allowed, Respondent would have been able to show that her pecuniary activity and attitude belied her claim of rape when the parties in fact had a previous consensual relationship.

Notwithstanding the Court's prior ruling, "If somebody testifies she was involved in the sale of it, it can come in too, if she was involved in the sale," *(P.T. at 9.)* the Court ruled that the T-shirt issue was inadmissible. In so ruling, the defense was precluded from offering the testimony of Jerry Martin, which testimony, given the

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[6] The State, in its Petition, noted the rapid shift in Defense Counsel's line of questioning, and suggested that this shift represented the failure to assert Respondent's Sixth Amendment rights. Appellate counsel for the State was not trial counsel, and was therefore completely unaware, from the ostensible record, that defense counsel was forced to abandon the line of questioning by order of the Court.

[7] The logos on the T-shirt stated, on the front, "Ain't Gettin' Off This Time," and, on the back, "They Finally Got the Big One."

Court's prior evidentiary rulings, was foundational to the cross-examination of the complaining witness.

ARGUMENT

I

THE MAINE SUPREME JUDICIAL COURT PROPERLY GRANTED RESPONDENT'S APPEAL BECAUSE HIS SIXTH AMENDMENT RIGHT OF CONFRONTATION OF WITNESSES WAS DENIED.

The Maine Supreme Judicial Court properly granted Respondent's appeal on the basis that Respondent's Sixth Amendment right to confront witnesses was improperly denied at trial.

The fundamental point in this case is that the State sought and obtained a ruling at trial which precluded the Respondent from offering specific evidence of bias, and which precluded the Respondent from cross-examining the complaining witness about that bias. Aside from the possible application of Maine Rule of Evidence 403[8], the evidence of bias was relevant and admissible and consequently was the proper subject for extensive cross-examination.

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[8] The Maine Rule of Evidence, 403, tracks Federal Rule of Evidence 403. Application of Rule 403 was not appropriate as the expected cross-examination was not merely cumulative of other bias evidence, nor would it have been repetitive or unduly harassing. See *Olden v. Kentucky*, 488 U.S. 227, 109 S. Ct. 480, 102 L.Ed 2d 513.

The Maine Supreme Judicial Court, following the principle of *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), concluded that the scope of discretion afforded a trial court, pursuant to Rule 403, was circumscribed by a defendant's Sixth Amendment right to confront the State's witnesses. The Maine Supreme Judicial Court correctly observed that defense counsel was subject to explicit pretrial instructions which severely restricted the scope of his cross-examination. A review of the multiple conferences between the Court and counsel regarding the nature of the cross-examination of the complaining witness demonstrates beyond dispute that the trial Court had defense counsel on an extremely short leash and would permit only one question regarding the T-shirt. The shortness of that leash is amply demonstrated by the fact that the Court would permit reference only to a generic T-shirt without any reference to the context or circumstances of the case. As far as the jury was concerned, the question dropped out of the clouds from nowhere and vaporized as quickly as it appeared. Respondent thus had no opportunity whatsoever for any development of the core issue of the parties' consensual relationship and of the complaining witness's motivation and credibility as manifested by her participation in the enterprise.

It is also significant that counsel for the Respondent deviated slightly from the Court-approved language by making the question slightly more context sensitive, asking "Have you sold, or have you been involved in the sale of any T-shirts that ***depict or show this incident***?" Significantly, the State objected, the objection was granted, and counsel for the defendant was severely reprimanded at

side bar, and ordered not to ask any further questions of the witness on that issue. The complete exclusion of any evidence of the T-shirt enterprise led the Maine Supreme Judicial Court to conclude that the resulting denial of Sixth Amendment witness confrontation rights was "functionally indistinguishable from the evidence improperly excluded in *Davis.*" *Graves v. State*, 638 A.2d 734 (Me. 1994), quoting *Davis v. Alaska, Id.*

The State places great stock in the fact that a follow up question (which as noted above was prohibited by the Court) to the court-approved question was not asked by defense counsel. Specifically, the State claims that defense counsel "never asked whether Shani had ever sold a T-shirt to Jerry Martin, and that consequently the failure to ask about the sale of a T-shirt to Jerry Martin constituted adequate opportunity for cross-examination." *State's Petition, at 28-30.* The State's argument defies the plain meaning of the question put to the complaining witness. She was asked, "Have you sold, or have you been involved in the sale of any T-shirts that depict or show this incident?" If the complaining witness had sold ***any*** T-shirts that concerned the incident at all, the only truthful answer the witness could have given was "Yes." Consequently, to ask a follow-up question, if allowed, "Did you sell a T-shirt to Jerry Martin?" was redundant, as the witness's earlier answer of "No" established that she did not sell a T-shirt to anyone at all. The State's entire argument on this point is fallacious and illogical, and is not supported by the facts of the case.

The State also claims that the admissibility of Jerry Martin's proposed testimony attacking the credibility of the complaining witness was an evidentiary matter to be

governed by the rules of evidence, hence was a State matter not rising to constitutional dimensions. This position completely ignores the procedural development of the case, and fails to recognize the multiple purposes of Jerry Martin's testimony. Because the State objected to the admissibility of the T-shirt evidence and the evidence that would have flowed therefrom, and because the State specifically represented to the trial court that there was no factual connection between the complaining witness and the T-shirts, the Court chose to severely restrict defendant's right to cross-examine the complaining witness about the T-shirt enterprise. The trial court's initial approach to the problem may have been correct insofar as it was intended to prevent the introduction of damaging evidence which might not have had any connection with the complaining witness. However, the trial court correctly observed at the time of its initial in limine ruling that if the defendant were to offer direct testimony of the complaining witness's connection or participation with the T-shirt, the evidence would be admissible. It follows that if the evidence was admissible for purposes of bias and impeachment in general, Respondent would have the right to cross-examine the complaining witness with that evidence. Thus, the testimony of Jerry Martin became foundational to the right of the Respondent to cross-examine the complaining witness about the T-shirt, for it was his testimony that linked her directly to it. The fact that Jerry Martin's testimony would accomplish other purposes concurrently with the evidentiary issue does not alter the fact that Jerry Martin's testimony went directly to establishing Respondent's constitutional right of witness confrontation.

The decision of the Maine Supreme Judicial Court in this case does not in any way extend the confrontation clause protection beyond that enunciated in *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed. 347 (1974), and the long succession of associated cases thereafter, such as *Delaware v. Van Arsdall*, 475 U.S. 673, 106 S.Ct. 1431, 89 L.Ed.2d 674 (1986). In *Davis*, the defendant sought to establish that a key prosecution witness was biased because the witness had a prior juvenile criminal conviction and therefore may have been over-zealous or overly eager to identify the defendants in that case. The claim of bias which the defense sought to develop was admissible in that case to establish a basis for an inference of undue pressure because of the State's witness's vulnerable status as a probationer. In *Davis*, the defense counsel was permitted a generic question, "Were you biased?" *Id.*, at 318, and was permitted to ask generic questions about the witness's contact with the police. However, when the witness responded with "No" answers, which on their face begged for follow-up questioning and impeachment, defense counsel was prohibited from doing so, because he was precluded from offering the witness's prior criminal record.

In the present case, defense counsel was placed on an even shorter leash than in *Davis*. The Court pre-authorized a single question, described by the Court itself as "innocuous". Defense counsel, in the face of a "No" answer by the complaining witness, was not permitted any follow-up at all. The entire subject was foreclosed. The violation of Respondent's Sixth Amendment rights was considerably more flagrant in this case than in *Davis*.

The State's argument claiming that Respondent had adequate opportunity to cross-examine the complaining witness is virtually identical to the reasoning of the Alaska Supreme Court's conclusion in *Davis v. Alaska, Id.*, at 314-315, that the cross-examination that defense counsel was permitted was adequate to develop the issue of bias for the jury. As this Court noted in *Davis*,

> While counsel was permitted to ask Green whether he was biased, counsel was unable to make a record from which to argue why Green might have been biased or otherwise lacked that degree of impartiality expected of a witness at trial. *Davis v. Alaska*, 415 U.S. 308 (1974) at 318.

In the present case, Respondent was unable to make any record whatsoever from which to argue issues of bias and animus. Just as in *Davis*, the straight-jacket in which the Court placed Respondent's counsel might well have led the jury to think that defense counsel was engaged in a speculative and baseless line of attack, asking questions that came from nowhere and led to nowhere. Such questions hardly create an effective record from which a case can adequately be argued to a jury.

The trial Court's most fundamental error in this case was its usurpation of the jury's function. Perhaps blinded by the zeal of the prosecution, the Court succumbed to the prosecution's argument and held that Respondent's right to cross-examine the complaining witness hinged on the credibility of the complaining witness herself. Specifically, the effect of the Court's evidentiary rulings made the defendant's ability to cross-examine turn exclusively on the truthfulness of the complaining witness's response to defense counsel's question about her participation in

the T-shirt scheme. A defendant's right to cross-examine his sole accuser cannot be made hostage to the accuser's own truthfulness.

It is for the jury, and the jury alone, to decide the credibility of the witnesses and the weight to be given to their evidence. Consequently, once the trial Court heard the voir dire testimony of Jerry Martin and heard that the complaining witness had handed him a T-shirt at her home, after informing him that a fresh supply of T-shirts had recently arrived and were stored at her residence, and that the complaining witness had accepted $20.00 from Jerry Martin for the shirt while making disparaging remarks to him about the Respondent and his genitalia, at that point the trial Court was compelled to admit the testimony of Jerry Martin and to permit Respondent to cross-examine. The Court interposed its opinion of the evidence in place of the jury's. The failure of the trial Court to allow the defendant effective cross-examination was "constitutional error of the first magnitude, and no amount of showing of want of prejudice could cure it". See *Smith v. Illinois*, 390 U.S. 129, 88 S.Ct. 748, 16 L.Ed.2d 314 (1968) and *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed. 347 (1974). The Maine Supreme Judicial Court properly concluded that Respondent was denied effective cross-examination in violation of his Sixth Amendment rights and accordingly, the State's petition must be dismissed.

II

THE PLAIN ERROR TEST HAS NO APPLICATION WHEN FUNDAMENTAL CONSTITUTIONAL RIGHTS HAVE BEEN VIOLATED AT TRIAL.

The Petitioner, in its second Question, argues that "it was not given fair warning at the trial level that the defendant's Sixth Amendment constitutional rights were an issue and that because of that, the State did not fully present its case." The State's argument is groundless.

The record leaves no question but that Respondent struggled, from the very outset, to fully present his case by demonstrating to the jury the complaining witness's bias and prejudice. This case was presented to the jury by both the State and the Defense as a credibility case, and Respondent's failure to secure full and effective cross-examination of the complaining witness was fatal to a proper presentation of his defense. Indeed, it can be fairly said that the outcome of this case might very well have been different had the evidence, which the trial Court described as "highly prejudicial," been before the jury.

The State of Maine at every turn sought to frustrate Respondent's ability to obtain full cross-examination of the complaining witness. The State successfully persuaded the trial Court to limit defendant's cross-examination of the complaining witness to a single generic question from which there was no follow-up allowed. Precisely because the State was so successful in its strategy, the State had no reason to offer additional testimony that would have unravelled the very results it had so

aggressively pursued. Because the State's strategy precluded Respondent from obtaining key cross-examination, the State cannot now be heard to complain that its strategy unknowingly violated Respondent's Sixth Amendment right.

As the Maine Supreme Judicial Court aptly observed,

> "When the evidence in question is proffered by a defendant in a criminal proceeding, and it is the State that is arguing that admission of the evidence would unfairly prejudice the State's case, the defendant's right to confront and cross-examine the witnesses against him significantly circumscribes the Court's discretion to exclude the evidence." *State of Maine v. Daren L. Graves*, 638 A.2d 734, App. at 15.

This observation was hardly a novel statement of the law. *Davis v. Alaska, Id.*, and its successor cases, circumscribing the trial Court's authority to invoke Federal Evidence Rule 403, or its state equivalent, to prevent cross-examination of a key prosecution witness was well known. When the prosecution elected to pursue the course that it did, it knew, or should have known, that Respondent's constitutional rights were violated. The State cannot now be relieved from the results of its trial strategy by imploring this Court to utilize a lesser standard of review. The State was never surprised at all: rather, it was the architect and maker of its own woe.

The State's reliance on *United States v. Olano*, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993) is misplaced. The State, in invoking *Olano*, suggests that since Respondent "forfeited" his constitutional rights by the failure to make a timely assertion before a tribunal having jurisdiction to

determine it, the defendant on appeal was subject to the plain error test, rather than the harmless error test of *Chapman v. California*, 386, 87 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1967), and *Arizona v. Fulminante*, 499 U.S. 279, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991). For all the reasons set forth in the first part of Respondent's brief, he did not forfeit his Sixth Amendment rights by failure to make a timely assertion of those rights. Respondent repeatedly and vigorously sought to introduce evidence of bias and prejudice on the part of the complaining witness and sought to offer impeachment evidence. The trial Court hobbled Respondent in that attempt. There was no forfeiture or waiver of the right of cross-examination; rather, it was incorrectly denied by a trial Court that at once characterized Respondent's evidence as highly emotional and prejudicial and at the same time, merely cumulative. Because there was no waiver or forfeiture of constitutional rights, the *Olano* argument is never reached and no consideration can be given to the plain error test as the appropriate standard of review in this case.[9]

Also, *Olano, Id.*, must be distinguished from the instant case, because in *Olano* the defendants did not object to the error, but, rather, expressly agreed to the

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[9] The Maine Supreme Judicial Court stated in its opinion that because of the result it had reached based on this Court's decision in *Davis v. Alaska*, 415 U.S. 308 (1974), it was not necessary for the Court to consider any other issues raised by the defendant on appeal which included the issue of whether or not there was plain error in the case. In the event that this Court were to grant review and subsequently to reverse, the plain error issue should be remanded to the Maine Supreme Judicial Court for determination in accordance with Maine State Law.

impugned procedure. Even more significantly, the defendants were unable to show that the error was prejudicial and affected substantial rights.

In the present case, the error was substantially more than plain error. Unlike counsel's waiver of known rights in *Olano, Id.*, at 1775, counsel vigorously and repeatedly pressed Respondent's right to present impeachment evidence and to cross-examine the complaining witness on that evidence. The error here is constitutional in proportion and "deprived the defendant of the basic protection [without which] a criminal trial cannot reliably serve its function as a vehicle for determination of guilt or innocence and no criminal punishment may be regarded as fundamentally fair." *Rose v. Clark*, 478 U.S. 570, 577-578, 106 S.Ct. 310, 92 L.Ed.2d 463. Such error does not attract the plain error analysis of Fed. Rule Crim. Proc. 52. *Olano Id.* at 1778, but rather is subject to the harmless error test of *Chapman v. California*, 386 U.S. 18, 87 S.Ct. 824, 17 L.Ed.2d 705 (1966).

The State invites this Court to treat the present case as "an opportunity to extend the plain error doctrine to constitutional issues which have not been raised in a timely manner at the *state* trial level, and where there is thus not an adequate record for application of the harmless error test." *State's Petition*, at 44. Again, for factual reasons, this case does not remotely resemble the State's characterization of it. The constitutional issue was adequately preserved by Respondent's continued insistence and attempt to assert the full panoply of his rights. Although Respondent did not utter a constitutional mantra, he certainly made it plain throughout the proceedings

what rights he was proposing to assert and what evidence he intended to offer. The trial Court cannot be said to have been misled or confused by the defendant's position. The record is completely adequate to demonstrate Respondent's repeated assertion of his rights, and consequently, this case clearly presents no opportunity to consider application of the plain error doctrine.

This Court should, instead, consider the factors enunciated in *Delaware v. Van Arsdall*, 475 U.S. 673, 10[illegible] S.Ct. 1431 (1986) to determine whether the error was harmless beyond a reasonable doubt. The Maine Supreme Judicial Court concluded that the error was not harmless, as the cross-examination excluded was critical impeachment testimony of Respondent's sole accuser, and the evidence was not merely cumulative, and there was additional corroborating evidence. This Court should recognize the satisfaction of the Van Arsdall criteria and adopt the conclusion that the trial error was not harmless error.

CONCLUSION

Respondent was "prohibited from engaging in otherwise appropriate cross-examination designed to show a prototypical form of bias" on the part of his accuser. As a result, he was unable to fully develop his case and have the jury pass upon the reliability and credibility of the complainant. The error deprived Respondent of his Sixth

Amendment constitutional rights and was not harmless. The State's Petition for Certiorari must be denied.

Dated: August 23, 1994

Respectfully submitted,

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